

The Notary Public in Singapore

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Abstract. *Singapore law, which has its root in English law, has now evolved into a distinctive jurisprudence. It continues to absorb and modify the common law as well as best practices from other mature legal systems. The common law system in Singapore bears material differences from some Asian countries which have imbibed the civil law tradition such as the legal profession. The common law is one important strand of Singapore politico legal fabric. Singapore has inherited the English common law tradition as a part of Anglo Saxon countries and thus enjoys the attendant benefits of stability, certainty and internationalization inherent in the British system. Singapore shares similar English common law roots with some neighbours, such as Malaysia, Brunei, India and Myanmar through the details of the application and implementation will differ according to each country's specific needs and policies, same goes to the legal professional they are adopted.*

Keywords: *Notary; Implementation; Professional.*

1. INTRODUCTION

The notary public is the official only authority to make deeds of contracts, deals, or decisions, which are required by the law to be formulated in an authenticated document. Notary is also responsible to set the date of the deed, to save it, to give the legitimate grosse or copies or partial citation of the deeds; as long as the making of the deeds are not tasked to other public officials and are only exclusive duty of the notary¹. Unlike the legal profession² in England which is divided into barristers³ and solicitors, the Singapore legal profession is a fused profession with each lawyer who is

¹ EEC. (2000). *Report from the Commission on the Implementation of Council Directive 93/13/EEC of April 1993 on Unfair Terms in Consumer Contracts*. Brussels 27.04.2000: COM. P. 18

² Steffan Anthony. (2009). *The Application of Civil Officer in Contracting Document*. National University of Singapore (Faculty of Law): Singapore Journal of Legal Studies Publishing. p. 261

³ Barristers means an advocacy specialist; a lawyer whose main work is directed towards the courtroom. In England and some other Commonwealth jurisdictions, a legal distinction is made between barristers and solicitors, solicitors are the main providers of oral or written advice, and barristers conduct litigation in the court, although the distinctions are increasingly becoming blurred. Nevertheless, in England and Wales, barristers and solicitors work together: the solicitor would typically make the first contact with a client and if the issue cannot be resolved and proceeds to trial, the solicitor would transfer the case to a barristers for an opinion or advocacy in the courts. Lawyers in other countries sometimes use the title "barristers and solicitor" because there is no legal distinction between the roles. In the USA all lawyers are referred to as "attorneys". In the UK a lawyer cannot be both a solicitor and barrister.

called to the bar known as an advocate and solicitor⁴, with the exclusive right of audience to appear before all courts of justice in Singapore. The Singapore lawyer may act as both an advocate¹¹ as well as a solicitor⁵.

As an advocate and solicitor of the supreme court of Singapore, he/she has the right to appear and plead before the Singapore court of justice. The opportunities of a Singapore lawyer are fairly varied, he/she may, for example, wish to serve as a legal or judicial officer in the Singapore legal service, an in house counsel of a company or practise law in a local or international law firm. In the local set up, the lawyer may handle litigation, corporate work, real estate and intellectual property work. Outstanding litigators, practitioners, and law academics have been appointed as senior counsel in recognition of their lofty professional standards.

To be admitted as an advocate and solicitor of the supreme court of Singapore, a lawyer must be a qualified person according to the Singapore Legal Profession Act. Before a qualified person can be admitted to the Singapore bar as an advocate and solicitor, he/she must also satisfy the other requirements of the act which are to be at least 21 years old⁶.

To be a qualified person, an aspiring lawyer can either graduate with at least a Bachelor of Law as a second class lower honours from National University of Singapore, or graduate with at least a second class upper honours or equivalent law degree from approved universities in the United Kingdom, Australia or New Zealand and obtain the Graduate Diploma in Singapore Law. Meaning, to be admitted to the Singapore bar, an aspirant has to first attain the status of a qualified person by obtaining a law degree from the National University of Singapore or the SMU (Singapore Management University), or from one of the approved overseas universities of the United Kingdom, United States, Canada, Australia, and New Zealand⁷.

In addition to the LL.B Programme, Singapore Management University offers a Juris Doctor (J.D.), program for graduates with a first degree from other disciplines as well as law graduates from civil law jurisdictions and non gazette universities in common law jurisdictions. Apart from a four year LL.B. program, National University of Singapore also offers a three year graduate of LL.B. program for graduates with a first degree.

With the increased internationalization of legal services, legal education in Singapore has placed greater emphasis on the need for law undergraduates to acquire knowledge of and exposure to foreign legal systems and international law. To ensure Singapore lawyers keep abreast of significant legal developments, a mandatory continuing professional scheme, likely to apply initially to young lawyer with less than 5 years

⁴ Solicitor means a lawyer who gives legal advice drafts documents such as contracts and wills, and arranges the purchase and sale of land and property. A solicitor's main work would not, typically, involve regular attendance at court for advocacy. His/her involvement in litigation is usually confined to the pre-hearing stages.

⁵ Edisons Wammer. (2002). *The Law Commission of England and Wales: (Consultation Paper 166)*. British: The Scottish Law Commission Press. p. 44

⁶ Pentony B, Graw S, Lennard J, Parker D. (1999). *Understanding Business Law 2nd Ed*. Australia: Butterworths Publishing. p. 69

⁷ Brian St. J. Collins. (2013). *Report on the Practical Implementation of Directive 93/13/EEC in the United Kingdom and the Republic of Ireland*. Rapporteur: University of Ulster, Magee College, Londonderry, Northern Ireland. p. 128-129

experience. The government of Singapore also reviews the supply of lawyers periodically to ensure that the supply of lawyer meets the growing demand for legal talent⁸.

2. RESEARCH METHODS

The method used is descriptive analytical method namely a research method to provide an overview of a situation or event and to explain the relationship between the incident and the problem to be studied. The results of this study are expected to provide a clear picture of the readiness of prospective notaries to open an office and practice being a notary after undergoing an internship at a notary's in Singapore.

3. RESEARCH AND DISCUSSION

3.1. The Role of Lawyer and Notary Public

Singapore with a common law tradition have an Anglo Saxon notary profession. Countries in which common law prevails like Singapore have a system of "notary public". By contrast, in civil law countries, the notary has a more dominant position and considerable importance than in common law countries. The task of Latin notaries clearly contrast with the limited tasks of a Notary Public in the Anglo Saxon system. This can be explained by the fact that the Latin notaries in Indonesian is a legal professional and the Anglo Saxon notary public in Singapore is not⁹.

Given the role the notary public has in the legal structure of countries having the Anglo Saxon system, it is not surprising that the Singapore notary public is not a legal professional. Obviously, he or she is strictly prohibited to give legal advice and draft documents, unless he/she is also an advocate as well as a solicitor of the Supreme Court of Singapore. In addition, the notary public is not impartial and independent like the Latin notary.

In the later development, a freedom of contract principle is only valid if both parties involved in the contract have equal bargaining position since of one of the parties occupies a weaker position while the other will have the chance to force its interest. Therefore, conditions in such kind of contract may violate fair and proper legal rules. Unfortunately, this situation happens most of the time that makes it the responsibility of the state to provide protection to the weaker parties. Concerning the problem of consumer protection, a consumer legal protection can be embodied by recognizing consumer duties and responsibilities, forbidding the inclusion of certain clauses in contracts, and making efforts in resolving consumer dispute cases.

The Singapore notary profession is a typical example of the Anglo Saxon notary public system, which is have a very different role in comparison to the Latin style notary. The type of notary public represents only one party in a legal transaction and does not have to look after the interests of other parties involved in the transaction or the

⁸ Eunice Chua Hui Han and Chen Siyuan. (2018). *IEL Civil Procedure in Singapore*. Singapore: Sunrey Magazine. p. 41-42

⁹ ASEAN. (1999). *The ASEAN Government Law Directory was first proposed at the 6th ASEAN Senior Law Officials*, Meeting held on 3-4 November 1999. Singapore.

interests of third parties. Therefore, in the Anglo Saxon notarial profession is more or less comparable with a lawyer¹⁰.

In common law jurisdiction, lawyers are the only legal professional and which this implementation is adopted by Singapore according to the country's specific needs and policies. The task of a legal professional in Singapore involves both giving legal advice and representing clients to court. Every lawyer or advocate in Singapore has the authority to represent clients in court. In contrast, in civil law jurisdiction the legal profession is divided in two groups. Only lawyers have the authority to represent clients in court and other legal experts merely give advice. The Latin notary is a legal professional but he is not allowed to represent clients in court. The Singapore notary public is not a legal professional¹¹.

Notary public means a person who has been appointed as a notary public by the Senate of the Singapore Academy of Law and be described as an officer of the court. According to Notaries Public Act Chapter 208 under section 3(2), stated that no person shall be appointed as a notary public unless he/she is practicing advocated and solicitor in Singapore and has so practiced for not less than seven years. The Notaries Public Act Chapter 208, expressly provides that every notary public shall have and may exercise within Singapore all powers and functions, which are ordinarily exercised by notaries public in England.

3.2. Background and History

The merger of Singapore with Malaysia on 27 May 1961, in order to prevent a communist takeover Singapore. However, the merger proved to be short lived. Singapore was separated from the rest of Malaysia on 9 August 1965 and became a sovereign, democratic and independent nation.

When Singapore was part of Malaysia, notaries public were appointed by the Attorney General of Malaysia under the notaries public ordinance 1959. After independence, notaries public were appointed by virtue of the Notaries Public Act by the Attorney General of Singapore. By 1995, the notaries public Act was significantly amended in that, the power of appointing a notary public became vested in the Senate¹² of the Singapore Academy of Law.

The functions of a notary public practicing in Singapore have not been defined by any statutory provision. But generally speaking, notary public shall have and may exercise within Singapore all powers and functions, which are ordinarily exercised by notaries public in England. A notary public in England may be described as an officer of law

¹⁰ Notary Public (Amendment) Rules 2019. Post by Notary Public Commissioner for Oaths » Tue, 01 Oct, 2019 11:03 am, FYI - there has been a changed in the law since 1 October 2019, Singapore Academy of Law has imposed new charges for all notarial acts performed in Singapore. All notaries public in Singapore are now obliged to charge an extra \$85.60 in addition to their notary fees for all notarial certificates.

¹¹ Kevin Y.L. Tan. (2009). *The Journey of A Journal: 50 Years Of The "Singapore Journal Of Legal Studies". Singapore Journal of Legal Studies*. 50th anniversary 1959–2009: Special Issue (July 2009), pp. 1-24 (24 pages). Published By: National University of Singapore (Faculty of Law)

¹² Andrew Phang. (2011). *Law Under Section 5 of the Civil Law Act*. Singapore Academy of Law Journal.

appointed by the court of faculties. With the introduction of Brooke's Book on Notaries, 12th Edition page 19, the notary public's primary services are as follow:

- 1) *"Whose public office is to draw, attest, or certify under his/her official seal, for use anywhere in the world, deeds and other documents, including wills or other testamentary documents, conveyances of real and personal property and power of attorney;*
- 2) *To authenticate such documents under documents under his/her signature and official seal in such a manner as to render them acceptable, as proof of the matters attested by him/her, to the judicial or other public authorities in the country where they are to be used, whether by means of issuing a notarial certificate as to the due execution of such documents or by drawing them in the form of public instruments;*
- 3) *To keep a protocol containing originals of all instruments which he/she makes in the public form and to issue authentic copies of such instruments;*
- 4) *To administer oaths and declarations for use in proceedings in England and elsewhere;*
- 5) *To note or certify transactions relating to negotiable instruments, and to draw up protests or other formal papers relating to occurrences on the voyages of ships and their navigation as well as the carriage of cargo in ships."*

3.3. Function and Power

There exist some Acts and rules affecting notaries public, that regulate the entry into the Singapore Notary Public, such as: The Notarial Public Act; The Singapore Academy of Law Rules; and The Notaries Public Rules.

According to Notaries Public Act Chapter 208 under section 4, stated that, without prejudice to the generality of the powers and functions, the practical functions of a notary public follow those applicable in England, with some variations and are principally as follow¹³:

- 1) Administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed:
 - For the purpose of confirming or proving the due execution of any documents;
 - By any master or member of the crew of any vessel in respect of any matter concerning the vessel; or
 - For the purpose of being used in any court or place outside Singapore
- 2) Take or attest any affidavit or statutory declaration referred to in paragraph a.
- 3) Have an exercise such other powers and functions as may be prescribed.

¹³ Arnold GP. (2020). *Notaries Public Manual: Code and Procedure*. Singapore: Academy of Law Press. p. 103

These shall not include the power to administer oaths or affirmation in connection with any affidavit or statutory declaration which is executed for the purpose of being used in any court or place within Singapore. Unlike commissioners for oaths, a notary public is in a position to witness a document signed in front of him/her which is in a foreign language. A notary public's duty is to attest deeds, contracts, and other instruments that are to be used abroad and to give a certificate of the due execution of such documents duly authenticated by his signature and notarial seal.

A notary public in Singapore is usually a practicing lawyer and has been appointed by the Singapore Academy of Law in accordance with the Notaries Public Act and its internal guideline. Notarisation is the act of a notary public authenticated by his/her signature and official seal, certifying or attesting the due execution in his/her presence of a document such as a deed, agreement or other writing or verifying some fact or thing¹⁴.

3.4. Commissioner of Oath

Notary Public and Commissioner of Oath are two services that show differences between them when it comes to their functions and duties. One has to understand the difference between the commissioner of oath and a notary public.

A commissioner of oath has to be the officer of court who can give an oath to make sure people tell the truth during the proceedings of the court. He/she is appointed by the court. In short, a commissioner for oaths is a solicitor authorized to administer an oath to a person making an affidavit¹⁵.

On the contrary a notary public is a person authorized to perform certain legal formalities especially to attest deeds, contracts and other instruments that are to be used abroad. A notary public can notarize signatures for documents and notarial seal. Unlike commissioners for oaths, a notary public is in a position to witness a document signed in front of him/her.

One of the main differences between a commissioner of oath and a notary public is that although both are authorized servants of the government, the notary public is authorized to certify, whereas a commissioner of oath is authorized to administer an oath or to verify the truth behind the statements made in the affidavit filed by a person. It is generally believed that the job of a notary public is easier when compared to the job of a commissioner of oath. This is due to the fact that the commissioner of oath is expected to go into the details of the affidavit and to verify the veracity of the statements made therein.

Commissioners for Oaths who are Advocates and Solicitors are, as at date of appointment to have no fewer than 10 years experience in active legal practice and/or legal service, and be at least 35 years old. As a general rule, if there have been disciplinary proceedings against an advocate and solicitor which resulted in the imposition of penalties, the application will be rejected.

¹⁴ *Ibid.*

¹⁵ Notaries Public Act (Chapter 208, Section 8) Notaries Public Rules R 1, Revised Edition 1999

4. CLOSING

Documents which need to be used overseas are often required to be notarized in one way or another. Received numerous enquiries for Notarial services and some have requested for an organisation's requirement or foreign authority. Notarisation is normally relevant for documents that are intended for use in other countries. Documents for use abroad may need to go through a process of Legalisation. When in doubt, it is important to confirm with the overseas party who requires the notarized documents, what exactly is required by them so as to avoid mistakes being made and time wasted on incorrectly notarized documents. A document need to be signed in the presence of a notary public who witnesses the signature. Sometimes, all that is required for a document to be certified as a true copy by a notary public. In such a case, the original document must be provided to the notary public for him to make a copy and to certify it. The document may also require the notary public to affix his seal on a special notarial certificate to be attached to the signed and notarized document.

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